

MEETING MINUTES CITY OF MILPITAS

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, April 4, 2017
Time: 6:00 PM Closed Session / 7:00 PM Open
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

CALL TO ORDER Mayor Tran called the meeting to order at 6:00 PM. City Clerk Mary Lavelle called the roll.

PRESENT: Mayor Tran, Vice Mayor Grilli, Councilmember Nuñez

ABSENT: Councilmembers Phan and Barbadillo were absent at roll call. Mr. Barbadillo arrived in Closed Session. Vice Mayor Grilli was absent after 8:06 PM.

CLOSED SESSION City Council convened in Closed Session to discuss one litigation matter.

City Council then convened in Open Session at 7:02 PM.

ANNOUNCEMENT No announcement out of closed session.

PLEDGE Boy Scouts Troop No. 193 led the pledge of allegiance.

INVOCATION Councilmember Nuñez offered a prayer to start the meeting.

SCHEDULE OF MEETINGS Council Calendar/Schedule of Meetings for April 2017

City Manager Tom Williams announced a public meeting on Thursday, April 6, 2017 at 7:00 PM at the Senior Center for community input on the FY 2017-18 Capital Improvement Program.

PRESENTATION Mayor Tran presented a commendation to International Wushu Sanshou Dao Association for its 30th anniversary, and it was accepted by Master Wayne Peng and Timothy Griswold.

PUBLIC FORUM Joy Roycesal, Milpitas resident, spoke of the lack of safety at Evans/Piedmont Road at Old Calaveras Rd. She and neighbors had great concern for accidents and near-accidents at this site, where stop signs were necessary.

Steve Seddell, Milpitas resident, was grateful to live in a city with free speech, and was happy for town hall meetings given by the Mayor. He was glad that Councilmembers cared about parking issues for people who lived near the new BART station. He served on the Water Rates Task Force and was pleased to participate in that. He noted the need for a diversity of residents including new high tech folks from newer developments on that task force.

Rob Means, 1421 Yellowstone resident, spoke about global climate change.

Robert Marini, Milpitas resident, spoke of recycled water used for irrigation. It was a violation of the law if it was not used for all of the community, rather than just some. Regarding Item No. 9 on the agenda about the budget, he would like it open for discussion. He spoke of the laws regarding Proposition 218.

Voltaire Montemayor, resident of 699 Penitencia St., said there were a lot of blind corners where accidents happened all over and drivers needed to be very careful.

Michael Tsai, Milpitas resident, enjoyed the town hall recently held by Mayor Tran. He thanked the Vice Mayor and staff who came out to a walking tour of Starlite Pines neighborhood recently, to pay attention to parking and other concerns there.

ANNOUNCEMENTS

City Manager Tom Williams announced that Cisco was not leaving Milpitas, while it did not renew a lease for one of its buildings in Milpitas. Cisco was still planning to expand its operations in the City. He asked the Public Works Director to the podium to give an update on Calaveras Road closure (east of Evans and Piedmont), where City staff was working to correct major safety hazard there with land movement on the hillside. Interim City Engineer Greg Chung updated the Council on traffic mitigations - including plan to install a flashing beacon - at the location of Calaveras and Piedmont Road, and nearby traffic. A demand signal would be budgeted and installed for traffic control, also.

Councilmember Nuñez announced a tour by Santa Clara VTA the following Saturday for the BART extension in Berryessa, open to all Councilmembers. He thanked staff for the update on the accident-prone intersection. For the April 18 Council meeting, he asked to have on the Closed Session agenda the evaluation process of the City Manager, in order for City Council to establish goals for the manager in advance of his performance review in November.

Mayor Tran understood that the Manager's performance review per his contract could occur at any time of the year, and asked the City Attorney to confirm that. City Attorney Diaz said this could be discussed at the Closed Session scheduled for the 18th. He did not want to get into a discussion because this was not on the agenda and could answer questions offline. Mayor asked, wasn't this public record? The City Attorney said they had to follow the agenda and this was just the announcements section. Mayor Tran asked, within the contract, did it say goals needed to be set? Mr. Diaz did not have the contract in front of him, and would be happy to look at that and talk to him afterwards.

Vice Mayor Grilli announced that she and Councilmember Phan had met with the Wage Theft Coalition of Santa Clara County. She asked to go on the next agenda a request for four hours or more of staff time to research this subject, they would have a brief presentation, and request to come back with an ordinance. The Vice Mayor also asked staff when they would anticipate the Council would get an update on parking issues in two neighborhoods. The City Manager replied that he would consult with the Planning Director and Police Department and get back to City Council, and bring back an agenda item for review.

Mayor Tran stated on the City Manager review, he would like to bring that out to the public forum during a regular City Council meeting for comment from the public. City Attorney Diaz replied that the Brown Act specifically allowed a Closed Session for performance evaluation of his position or the City Manager's. He did have concerns about doing that in open session because there was legal risk to the agency. He would not want to expose the City to lawsuits, and the Brown Act authorized it in Closed Session. It made more good legal sense to protect the city. The Mayor asked the Attorney if he had under the rule of law the authority to have the City Manager performance review on the agenda for the public portion of the City Council meeting on April 18. Mr. Diaz advised that was not a good plan, and asked to have the conversation offline, based on the Brown Act and that it was not on the agenda. He advised against it. Mr. Diaz stated he did not make policy decisions, so that was for someone else to answer and he'd given his legal advice.

Next, the Mayor announced there were several open seats on City Commissions, so he invited residents to apply or contact him by e-mail if they were interested. Councilmember Nuñez asked about specific Commission vacancies and the City Clerk stated aloud the six Commissions that had openings: Arts, Community Advisory, Economic Development, Emergency Preparedness, Parks and Recreation, and Telecommunications Commissions.

The Mayor's earlier request was left open and Mr. Nuñez did not want to leave it there. He asked if this was a policy decision for the Councilmembers to decide. City Attorney Diaz repeated his earlier comment about the topic not on the agenda for this meeting, stretching the Brown Act. Unless there was some policy document that any Councilmember could put something on the agenda, that's something they could look into and look in the handbook. Councilmember Nuñez

believed he was in compliance with the law and with the contract, and assumed he would see on the next agenda what he asked for on Closed Session based on the contract he'd read.

Councilmember Barbadillo asked hypothetically if he would be allowed under the Brown Act to evaluate the City Attorney's office in public. With all due respect to the Council, Mr. Diaz said he would not answer any more questions because they were violating the Brown Act. They could discuss it in Closed Session.

City Manager Williams advised the Mayor to read his employment contract. In there, it said his performance evaluation was to be conducted in Closed Session. He told the Mayor he did not have the ability to place it on the agenda. Mr. Williams could have the Mayor talk to his attorney.

City Attorney Diaz got up from his seat, and said he could not participate in the discussion any longer, stating that the Council was violating the Brown Act, and started to leave the dais.

When Mayor Tran asked Councilmember Barbadillo if he was done, Mr. Barbadillo said yes, but that he was not satisfied.

Mayor Tran said he was not looking to do the evaluation in public. He wanted to put it on the agenda for Council to go forward, to have on the agenda for the next public meeting, and would like Council to vote on it on the public portion of the agenda in two weeks. He wanted the Council to approve the process to happen going forward within the Closed Session referred to. The City Manager asked for further clarification on his objective.

Mayor Tran said he only wanted Council to vote on the City Manager's evaluation on the agenda in open session.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Diaz asked Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. None were reported.

APPROVAL OF AGENDA

Motion: to approve the meeting agenda for this evening, as amended

The City Manager had received a request from School Board officials to hear item no. 12 (report on school enrollment) to be heard first.

The City Attorney noted that item no. 15 (resolution) was requested to be continued to the next meeting, as noted on the agenda.

Mayor Tran requested to remove agenda item No. 8 (request related to Information Services staff) to come off the agenda.

Motion/Second: Councilmember Nuñez/Councilmember Barbadillo

Motion carried by a vote of:
AYES: 4
NOES: 0
ABSENT: 1 (Phan)

CONSENT CALENDAR

Motion: to approve the Consent Calendar (items noted with *asterisk), as amended

Councilmember Nuñez requested to remove items no. 4 (new police car), no. 9 (mid-year budget adjustments), no. 13 (new MOU with Police) and no. 14 (resolution for Harmony development) from the consent calendar.

Councilmember Barbadillo requested to remove agenda item no. 6 (odor report update) from consent.

Motion/Second: Councilmember Barbadillo/Councilmember Nuñez

Motion carried by a vote of:

AYES: 4
NOES: 0
ABSENT: 1 (Phan)

- * 7. Commission Appointment Re-appointed Commissioner Dhaval Brahmabhatt to another term of service on the Economic Development Commission, to a 3-year term that will expire in April of 2020.
- *10. Elementary Olympics 1) Approved a partnership with the Milpitas Unified School District for the Milpitas Elementary Olympics 2018.
2) Directed staff to add \$17,352 into the Recreation and Community Services Department operating budget for FY 2017-18 budget.
- *15. Resolution Deferred to the next regular City Council meeting date of April 18, 2017.
- *16. Resolution Adopted Resolution No. 8652 granting initial acceptance for Street Resurfacing 2016, Project No. 4280 subject to a one year warranty period and reduction of the faithful performance bond to \$201,037; and granting authorization to the City Engineer to issue the notice of final acceptance and to release and discharge the performance bond after the one-year warranty period without further City Council action.
- *17. Bids for Streets 2017 Approved plans and specifications for Street Resurfacing 2017, Project No. 4284, and authorized advertisement for bid proposals.
- *18. Full Trash Capture Device Authorized the City Manager to award and execute a contract with the lowest responsible bidder for the installation and maintenance of 94 full trash capture devices in storm drain inlets for an amount not to exceed \$350,000.

MEETING MINUTES

Motion: to approve City Council meeting minutes of March 21, 2017

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

Motion carried by a vote of:

AYES: 4
NOES: 0
ABSENT: 1 (Phan)

UNFINISHED BUSINESS

1. Report on Volunteer and Intern Programs

Human Resources Director Tina Murphy gave an overview report about (1) Milpitas Volunteer Partners, the MVP program by Recreation Services, and (2) the City's summer internship program coordinated by Human Resources department.

Councilmember Nuñez discussed college students and value of interning. He asked how Councilmembers could have interns. The Human Resources Director replied that Councilmembers can work with H.R. and ensure the student could benefit by learning and not do what would be staff work.

Mayor Tran commented this was a great program to have student interns. He asked how high school students could find out about an opportunity. Ms. Murphy replied, on the City's website and via listings on www.calopps.org as well. The Mayor asked if the interns must be from Milpitas, and the Director said not necessarily. The Mayor wanted to have the program be only for Milpitas kids and families. Ms. Murphy would have concerns for EEOC complaints if the program was so limited.

Councilmember Barbadillo asked if there was a budget for paid interns and staff replied any pay for interns would come out of the department budget.

No vote was taken on this staff report.

2. Closed Captioning

Information Services Director Mike Luu explained the outreach he'd conducted to seek input on other cities' efforts with regard to Closed Captioning of webcast of Council meeting. Only three cities in Santa Clara were doing so: Palo Alto, San Jose, and Sunnyvale. Palo Alto offered the service only when requested. Mr. Luu also provided costs for real time live interpreters for minority languages at the Council meeting for Chinese, Spanish and Vietnamese languages. Staff recommended to offer the Closed Captioning service only when needed, by request.

Councilmember Nuñez asked if the report was given based on the request of Council member Phan. Staff replied yes, and it was also due to FCC upcoming requirements for ADA (Americans with Disabilities Act) compliance in 2017.

Mr. Nuñez asked if the City had staff who were paid for speaking other languages. Staff reported there was a list of such qualified staff who were paid additional 2%. The Councilmember wanted to find a way to provide the translation service at the meetings.

Councilmember Barbadillo asked about an exemption that Mr. Luu had mentioned. He explained that the City could put a note on its website, make an open contract with a company and then make arrangement to do closed captioning with the company upon request. Mr. Barbadillo suggested surveying the community to find out who was using the website, webcast and watching cable television channel 15, and who needed translation services.

Mayor Tran asked if the services would be by request only and if the meetings would be translated for closed captioning in another language and staff replied that would cost \$7 per minute or more. The City Manager said it would be by cost recovery for that charge.

City Manager Williams informed the City Council that staff could come back with ordinance amendments regarding costs and charges, to offer closed captioning and translation services for City Council meetings.

Mayor Tran agreed with Councilmember Nuñez about the need to offer these services for free.

Next, the Mayor welcomed comments from the audience.

Steve Seddell, Milpitas resident, was all for hearing from people from all different cultures. He spoke of neighbors who came from India.

Voltaire Montemayor, Milpitas resident, spoke of how expensive this service would be. Sign language was expensive, too.

Motion: to receive the report on closed captioning from staff, to offer the services when requested, to do a pilot with no cost, and look at automation for different languages, and come back with recommendations at a future Council meeting - with a fee schedule amendment for cost recovery of video recordings in various languages

Motion/Second: Councilmember Nuñez/Mayor Tran

Councilmember Barbadillo asked for clarification on what was coming back.

City Attorney Diaz said they could see if floodgates opened, and then if the costs in an ordinance could be waived temporarily, the Council could later reconsider an ordinance change permanently.

Mayor Tran asked about making sure to have closed captioning for the deaf. The City Manager said that was available now.

Councilmember Nuñez called for a vote.

Mr. Diaz repeated the motion made earlier to accept the report, and include directing staff to waive fees for closed caption for translation services, for a period of time through December 31, 2017 and report back to the Council.

Motion carried by a vote of:

AYES: 3
NOES: 0
ABSENT: 2 (Grilli, Phan)

3. Ordinance No. 41.12 for Planning Commission pay

Interim Finance Director Jane Corpus explained the request to increase compensation for Planning Commissioners from \$25 to \$100, based on direction by the past City Council last year. To effect this pay change, an ordinance was legally required. City Attorney Diaz gave the legal basis on the need for the ordinance.

Councilmember Nuñez asked for the vote last year, and Mr. Diaz reported the prior City Council voted 3 ayes and 2 noes.

City Manager Williams offered that staff could ask the Planning Commission Chair to come to the next Council meeting to explain what that group did for its work and to explain why the increase was requested. This matter could be moved to the next meeting date on April 18, with a request to the Chairman to address the Council.

Motion: to continue the ordinance related to Planning Commissioner pay to the next City Council meeting, and to direct staff to request the Planning Commission Chairman to attend the Council meeting on April 18, 2017

Motion/Second:

Councilmember Nuñez/Mayor Tran

Motion carried by a vote of:

AYES: 3
NOES: 0
ABSENT: 2 (Grilli and Phan)

4. Approve Police Vehicle

Councilmember Nuñez asked about the vehicle replacement process for the police department, and what happened when there was an accident, as with this vehicle. Purchasing Agent Chris Schroeder responded that it was covered by insurance through ABAG (Association of Bay Area Governments). Mr. Nuñez asked Ms. Corpus about equipment amortization and how that applied to vehicle replacement, and she explained.

Motion: to approve the purchase of the replacement vehicle for \$36,231.20 and approve a budget appropriation of \$49,231.20 from the Equipment Fund to the Fleet Operating Budget and the Non-departmental budget to cover the purchase of the vehicle and the cost of the additional equipment and paint work

Motion/Second:

Councilmember Nuñez/Mayor Tran

Motion carried by a vote of:

AYES: 3
NOES: 0
ABSENT: 2 (Grilli and Phan)

5. Citywide WiFi

Information Services Mike Luu gave a history and overview of city-wide wireless computer service in the City of Milpitas, over the last 15 years. He concluded with a request to proceed with a Request for Proposals (RFP) for wireless.

Councilmember Nuñez asked Mr. Luu why the fiscal impact was listed as none. Staff described the City of Fresno, which had gone through the RFP process. Mr. Nuñez wanted to know if this meant there was zero cost to the City.

**9. Mid-Year FY 2016-17
Budget**

Interim Finance Director Corpus described the process for adjustments to the FY 2016-17 budget, typically done at the mid-year each fiscal year in the City. Council must approve the changes to the budget, based on requests made by departments for operations or capital budget adjustments.

Councilmember Nuñez questioned adjustments to the Capital Improvements Program, and asked if those were those related to the CIP presented the previous week. Staff replied no, because last week's discussion was on the future FY, not the current one.

Councilmember Nuñez asked about several listed items and sought more information on: No. 3 - replacement for van in Recreation Services, funding used from the sale of McCandless property toward remediation of the land and other items. He was specifically concerned about CIP items no. 8, no. 10 and no. 11. He requested to move those over to be considered on April 18 with other new FY CIP items at that meeting.

Mayor Tran asked about funding that was to be used mid-year for the current FY. He heard Mr. Nuñez ask about the funds in future fiscal years also. Councilmember Nuñez felt those items could be considered either this year or in the new year, but he wanted to have more chance for public input before voting on those items and the Mayor agreed.

Mayor Tran asked about Daniel Ct. and water structure work there. Public Works Director Nina Hawk explained that water main breaks occurred there several times, so she was asking to advance the replacement project.

Motion: to approve eight of the Fiscal Year 2016-17 mid-year budget appropriations (or transfers) as presented to Council (on itemized list), while removing items no. 8, no. 10 and no. 11 in order to present them for approval at the next regular City Council meeting, following opportunity for community input

Motion/Second: Councilmember Nuñez/Mayor Tran

Motion carried by a vote of: AYES: 3
NOES: 0
ABSENT: 2 (Grilli and Phan)

Mayor Tran invited speakers from the audience.

Robert Marini, resident, asked about the current fiscal year and use of Water Capital Surcharge funds to be used for Daniel Ct. improvements. He spoke about water rates, charges, and potable versus recycled water.

Voltaire Montemayor, resident, said to correct it now, better late than never, if urgent domain, then you have enough budget and it would be audited.

11. International BBQ

Senior Planner Michael Fossatti detailed the request from the Milpitas Chamber of Commerce for the International BBQ & Festival including a waiver of city fees and services for the special event near Cisco's campus on May 20-21, 2017. The request was for a total of \$21,480.48 in services and \$8,200 in business license fees.

Councilmember Nuñez asked if the City of Milpitas was a member of the Chamber. Chamber executive Mark Tiernan came to the podium and said he was not sure but there was a long working relationship between the Chamber and the City. Mr. Tiernan explained the Chamber's request and commended staff for clearly identifying all costs and services with transparency.

Mr. Nuñez was supportive of the event. Mr. Tiernan responded to questions from the Councilmembers about expenses, and revenue earned at events in past years.

Mayor Tran said he would support this request. He asked about security to avoid what happened last year, and to avoid theft. Mr. Tiernan responded about on-site security and locked storage for overnight needs at the end of event. The Mayor said he would want the event to at least break even, if the City was asked to contribute nearly \$30,000 toward it.

Councilmember Nuñez asked where the money was spent at the Chamber. Mr. Tiernan detailed Chamber expenses. Mr. Tom Valore from the Chamber answered further questions about costs, and money spent to get the event operating.

Mayor Tran invited comments from the audience.

Voltaire Montemayor, resident, gave his support for the fun event at the BBQ and promoting Milpitas.

Councilmember Nuñez acknowledged valuable participation by the City for this event every year. The City needed to contribute from the beginning next year, in terms of planning and co-sponsoring the event from the start. He made the following motion.

Motion:

1. Approve the request from the Milpitas Chamber of Commerce for City services and authorization to use of the City's name and logo for promotional and marketing materials for the 2017 International BBQ and Festival on May 20-21, 2017.
2. Furthermore, direct the formation of an equal partnership between the City of Milpitas and the Chamber of Commerce for the planning of this event in future years and not scheduled to be in conflict with other events in neighboring communities. and also include that Business License Fees be waived only for businesses in Milpitas (i.e. not all vendors).

While Councilmember Nuñez made a motion as listed above, there was no second and the motion failed.

Councilmember Barbadillo felt if the Chamber extended its financial figures about last year's BBQ event, he could be convinced to vote in favor of what was requested. Rest assured, he wished to be partners as a co-sponsor.

Mr. Tiernan responded if this matter was tabled until the next time, he would get all the information as requested by Mr. Barbadillo.

Councilmember Nuñez wanted to favor the request made by his colleague.

Motion: to come back at the next meeting on April 18 and have the Chamber of Commerce provide supplemental information on last year's financials and projections for this year for the International BBQ & Festival event in May

Motion/Second: Councilmember Nuñez/Councilmember Barbadillo

Motion carried by a vote of: AYES: 3
NOES: 0
ABSENT: 2 (Grilli and Phan)

12. MUSD School Enrollment Projections

This agenda item was heard first on the agenda, prior to item no. 1.

Milpitas Superintendent Cheryl Jordan addressed the City Council with detailed information about changes in demographics of students presently in Milpitas schools and anticipated changes by 2030, with a likely net change of only 140 students by that year.

Vice Mayor Grilli departed the Council meeting at 8:06 PM.

Councilmember Nuñez thanked Ms. Jordan for the report and he had confidence in the numbers provided.

The MUSD consultant demographer Tom Williams came to the podium to respond to Mr. Nuñez' questions about the number of students for the elementary schools in Milpitas.

Mayor Tran asked about the high school. With a 687 student wave coming in, he knew the high school would be impacted and wanted to know what would address the increase in students on campus with limited acreage. Ms. Jordan mentioned the dual enrollment classes with Evergreen Community College, which would remove some students from the high school campus. The district planned a student union in the center, and to use the Air Point site along with moving the district's administrative offices.

RESOLUTIONS

13. Resolution

Human Resources Director Tina Murphy presented the request for City Council to adopt a resolution to approve a new Memorandum of Understanding with the Milpitas Police Officers Association for the next five years.

Councilmember Nuñez felt this was something to celebrate and that was why he removed it from consent. He wanted to give congratulations to the MPOA organization, and offered that along with the City Council and staff at the dais.

Motion: to adopt Resolution No. 8650 approving the Memorandum of Understanding with the Milpitas Police Officers Association covering the period of January 1, 2017 through December 31, 2021

Motion/Second: Councilmember Nuñez/Councilmember Barbadillo

Motion carried by a vote of: AYES: 3
NOES: 0
ABSENT: 2 (Grilli and Phan)

Councilmember Barbadillo commented that he was fully in favor of the new MOU and it was good to celebrate. Police deserved this contract, he stated.

14. Resolution

Councilmember Nuñez asked a question about fiscal impact if the bond amount for this project was reduced, by the Council's action. Interim City Engineer Greg Chung explained why this was done (reduction of bond for faithful performance once a project was completed). It was done as protection or insurance as a warranty for one year after any project was done.

Motion: to adopt Resolution No. 8651 granting initial acceptance of public improvements and approving a reduction of improvement security for the faithful performance for Harmony Subdivision at 1765 McCandless Dr. by DR Horton Bay; and authorize the City Manager to execute a Stormwater Management Operation and Maintenance Agreement

Motion/Second: Councilmember Nuñez/Councilmember Barbadillo

Motion carried by a vote of: AYES: 3
NOES: 0
ABSENT: 2 (Grilli and Phan)

ADJOURNMENT

Mayor Tran adjourned the Council meeting at 12:06 AM on Wednesday, April 5, 2017.

The foregoing minutes were approved by Milpitas City Council on April 18, 2017.

Mary Lavelle, Milpitas City Clerk